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The Center felt that Dr. Türk's presentation deserved wider distribution and discussion so we asked him for permission to distribute it after he made several revisions.

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Chancellor Touhill, Professor Glassman,**
Distinguished guests, ladies and gentlemen,

It is both necessary and exciting to discuss the issues of human rights in a global perspective. The title of my presentation today suggests a strong emphasis on those situations involving massive violations of human rights and resulting humanitarian disasters which may justify the use of force by states. This is, of course, a vitally important aspect, but it has to be seen in the context of the broader picture of human rights, a picture which reveals important developments affecting the fate of the individual in a changing world.

In his Nobel lecture delivered in Oslo on 10 December 2001, the Secretary-General of the United Nations expressed his belief that in the 21st century :

> "[the] mission of the United Nations will be defined by a new, more profound awareness of the sanctity and dignity of every human life, regardless of race or religion. This will require us to look beyond the framework of States, and beneath the surface of nations or communities. We must focus, as never before, on improving the conditions of the individual men and women who give the state or nation its richness and character".

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*** Dr. Blanche M. Touhill, Chancellor, University of Missouri-St. Louis, and Dr. Joel Glassman, Associate Vice Chancellor for Academic Affairs and Director, Center for International Studies, University of Missouri-St. Louis.*

This is a powerful statement and one calling for innovation in international politics. It envisions a strong movement away from a State-centered approach to an approach based on the recognition of the centrality of the human person in global affairs – a truly visionary concept. But is this approach a revolutionary one? I do not believe so –it can build upon the achievements made as a result of the paradigm which emerged in the aftermath of World War II. At the normative level, that new paradigm was expressed in such instruments as the United Nations Charter (1945), the Universal Declaration of Human Rights (1948), the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the Geneva Conventions on the Protection of Victims of War (1949). These documents have directed international attention to the fate of human beings as individuals and human groups, away from the traditional, State-centered concept of international politics. Much of what is being done today and, indeed, the Secretary-General's pleadings in Oslo, are a part of a long-term effort to give a real meaning and political content to the ideas which emerged in the wake of global conflagration more than half a century ago.

Human Rights: an Era of Implementation

Human rights entered the global scene with the adoption of the Universal Declaration of Human Rights in 1948 as a part of the new international order established in the post-World War years. Like the UN Charter three years earlier, the Universal Declaration was adopted with the motivation to prevent a future descent into the barbarism of war. The horror of war and the imperative to prevent a recurrence of the holocaust were the primary motivating reasons for the international codification of human rights and were a major factor for their acceptance.

This existential motivation for international codification of human rights was complemented by the optimism of the time which was expressed in the belief that human rights are universal.

The question of whether human rights are truly universal has been open from the very beginning. The Universal Declaration of Human Rights was not adopted unanimously. The debate over the universality of human rights continues, and has reached one of its peaks in recent years. Objections are based either on the argument of cultural diversity or on various types of philosophical scepticism regarding the idea of human rights itself.

However, the objections raised to the universality of human rights have not weakened the meaning of human rights themselves. The fact that human rights are needed is historically established and ascertainable in all parts of the world, across religious and civilizational fault lines. Individuals need and claim basic human rights in various ways throughout the world in order to protect their lives and basic freedom needed for human existence.

Another factor helping to make human rights less vulnerable to cultural diversity and philosophical differences regarding their universality is the fact that human rights have become a part of international law. Human rights are accepted and promulgated by UN declarations and in a number of multilateral agreements concluded among states. International law, however imperfect and underdeveloped, strengthens the legitimacy of human rights and diminishes the relevance of sceptical views about their philosophical or cultural or religious underpinnings. The importance of the international legality of human rights may be sometimes underestimated, but it can no longer be ignored.

The following two pillars are essential: the need for human rights expressed in all parts of the world and their international legal enactment. They established a sufficient foundation allowing us to address the practical problems of human rights in the global context which rest, for the most part, in the realm of implementation.

The problems of implementation of human rights are diverse and lie both in the realms of law and politics.

The legal character of human rights is not only a strength, it brings with it some inherent weaknesses. One of them is the very normative nature of human rights processes.

All legal norms, including human rights norms have three essential dimensions: descriptive, prescriptive and constitutional. Each norm contains a description of the real life situation it intends to address, a prescription regarding the desired or prohibited behaviour and, finally, an identification of the norm's position in the hierarchy of legal norms. The latter, i.e. "constitutional" dimension, is defined by the content of the norm in question and by the level of its abstractness. General legal norms require further, more specific norms in order to make implementation possible. Human rights norms are powerful in their content as basic; i.e., constitutional, norms. However, many among them require further, specific norms containing more detailed descriptive and prescriptive content for their implementation. Human rights norms such as the right to fair trial (Art. 10 of the UDHR), the right to privacy (Art. 12 of the UDHR), or the right to work (Art. 23 of the UDHR) are examples of such rights. This legal feature of international human rights norms points to the importance of the implementation, which requires further legal elaboration of norms, especially of their descriptive content. It also requires coherent jurisprudence and consistency in other practices intended to give real life to abstract norms.

This process takes place in a specific social, political and cultural context. Implementation of human rights most often involves conflicting claims. Management of such conflicting claims is the essence of the implementation of human rights, a circumstance which explains why the role of non-governmental organizations is critical for human rights implementation.

Implementation takes place within the legal system of a given country and within its own social context. The actual reach and political effect of international decision-making in the field of human rights is still very limited, except when, as for example in the case of the European Court of Human Rights, the international decisions create a

direct effect within the legal order of the state party to the European Convention on Human Rights. Most other international decisions for the implementation of human rights have an indirect effect, and require some form of action by the Government of the state concerned. This is an important characteristic of human rights implementation today – and one which testifies to the continued relevance of state sovereignty in matters of human rights.

I shall return to the issue of sovereignty shortly. Before that, however, I need to mention some of the current challenges to the implementation of human rights at the international level. This is necessary because legal and political complexity of implementation also characterizes international action.

Issues of implementation have represented a major part of the international human rights agenda since the beginning. They have gained in importance since the completion of the basic codification of human rights about a decade ago. The World Conference on Human Rights held in Vienna in 1993 and establishment of the post of the High Commissioner on Human Rights later that year is probably the most visible milestone in the transition towards implementation as the essence of the international human rights effort. There are, in my opinion, four major areas of international implementation of human rights which require priority, now at the beginning of the new century and the new millennium. Two of them are traditional and two are new.

First, the implementation mechanisms established long before 1993, which have developed their own procedures and methodologies should be strengthened. Treaty-based monitoring systems involving the work of expert bodies are a typical example. These mechanisms require an ever stronger secretariat support, an aspect which is sometimes neglected but one that continues to be a priority.

Second, some other traditional mechanisms, such as the system of country rapporteurs appointed by the Commission on Human Rights, need to be improved. Serious reporting on country situations based on thorough knowledge and analysis of

facts and on compelling arguments on the measures to be taken to improve the situation of human rights in a particular country is a basic type of human rights work. Furthermore, sometimes reports of this kind serve as early warning and as a potential instrument of conflict prevention. For this potential to be properly developed, the reports need to deal not only with the violations of human rights per se, but also with their social and political context and must not shy away from making policy recommendations. Not all reports currently produced in the framework of the Commission of Human Rights are of the same quality and further improvement is needed: in some cases in assuring accuracy in the analysis, and in others in enriching the contextual aspect of the reports, or in making the policy recommendations more specific.

Furthermore, there are methods of implementation of human rights which are relatively new and require particular attention. One of these are human rights field operations – such as monitoring offices and human rights segments in the UN peace operations. The soon to be established International Criminal Court is another novelty.

Human rights field operations require special attention at the present stage of development of an international strategy to implement human rights. They are usually a part of a broader peace-building or, sometimes, conflict prevention strategy. Such a strategy requires a thorough and comprehensive diagnosis of the problems at hand, a realistic programme of action, adequate means and the necessary technical skills. These are heavy requirements and all of them apply to human rights as well as to other segments of the operation. Concrete tasks such as the establishment of an independent judiciary or a credible electoral system or a free media require both a good "human rights compass" and a variety of technical skills and means to make a real contribution to the improvement of the human rights situation. Where do human rights discussions end and technical work start? Ensuring the necessary technical sophistication is a major challenge of human rights implementation in such situations.

The International Criminal Court which will probably be established before the end of this year will present another type of issues.

The Court and its jurisprudence are expected to bring a number of novelties to the international system. The most important among them will be the new balance between national and international jurisdictions for genocide, crimes against humanity and war crimes. The Statute of the Court (Article 15) stipulates the right of the Prosecutor to initiate an investigation proprio motu. In its decision on admissibility (Article 17) of cases brought before the Court at the initiative of the Prosecutor, the Court will have to determine whether the initiative is admissible as a result of state's unwillingness or inability to genuinely carry out the investigation and prosecution. In other words, the Court will function on the basis of the principle of complementarity of the jurisdiction of the International Criminal Court with the national criminal jurisdiction.

The principle of complementarity of jurisdictions strengthens the responsibility of states to do, within their jurisdictions, what is necessary for the prosecution of the most serious crimes. Should states be unable or unwilling to carry out their responsibility, the Prosecutor and the International Criminal Court would have the opportunity, essentially, to take their role. It appears reasonable to assume that the "sword of Damocles" of the International Criminal Court will contribute not only directly but also, and perhaps even more importantly, indirectly to the greater effectiveness of International Criminal Law, thus strengthening the international regime of human rights. One of the consequences of the construction of the jurisdiction of the International Criminal court was the reaffirmation of the basic importance of state sovereignty. The Court's statute represents the evolution of law and sovereignty rather than a revolutionary change.

Human rights and State Sovereignty

The quoted examples are among the most pertinent issues on the contemporary agenda of international implementation of human rights. At the same time they are also among the more interesting illustrations of the situation of state sovereignty at this point in time. Taken together they demonstrate that sovereignty of states continues to be important for the implementation of human rights. Furthermore, they show that state

sovereignty continues to be molded by the evolution of international law, very much in the manner known from previous periods in history. The gradual expansion of the domain of international law continues while the scope of domain reservée of sovereign states continues to be modified by this evolution. This does not necessarily imply a diminution of state sovereignty – a state which implements the basic norms of human rights, which cooperates internationally and is willing and able to prosecute war criminals based on her own sovereign will is not likely to be adversely affected by the evolving international mechanism. Moreover, there is a vast area of human rights implementation which remains within the realm of the sovereignty of states.

This point needs to be made strongly for at least two reasons. First, traditional human rights advocacy has focused on threats to human rights originating from the holders of state power. The emphasis of protection of human rights against the state was historically justified and conceptually sound. However, it did not address all threats to human rights. Recently the international community has witnessed atrocities which take place in situations of collapsed states and the resulting armed conflicts. State sovereignty has become appreciated as a firewall against anarchy and resulting abuses of human rights. Second, the period of uncritical fascination with globalization and the views of sovereignty as an "outdated concept" which has allegedly "spent its historical energy" seems to be coming to its end.

In a recent collection of essays titled "Human Rights as Politics and Idolatry", Michael Ignatieff wrote:

> "[Yet] it is utopian to look forward to an era beyond state sovereignty. Instead of regarding state sovereignty as an outdated principle, destined to pass away in the era of globalization, we need to appreciate the extent to which state sovereignty is the basis of order in the international system, and that national constitutional regimes represent the best guarantees of human

rights". (M. Ignatieff: Human Rights as Politics and Idolatry, Princeton University Press, Princeton and Oxford, 2001, p. 35).

The above quotation, which has been left in the said collection of essays remarkably uncontested, sounds almost Westphalian in its tone. But is it historically and conceptually correct and does it suggest movement forward?

State Sovereignty: the Need for a Proper Understanding

In my opinion the answer to both these questions is yes, provided that the concept of sovereignty is properly understood. State sovereignty has historically established itself as a fundamental political and legal concept – but not as an absolute one. Sovereignty is not an absolute and, above all, not the only relevant legal and political concept. It is important to distinguish sovereignty as the supreme authority which is necessary for the political community to exist and the absolutist uses and interpretations of sovereignty which have been characteristic of much of the twentieth century and which have added to serious problems of human rights. Now, in the new century and after the chaotic ending of the previous one, we should be able to appreciate better the core meaning and importance of sovereignty as a basic organizing principle of states and of the international system.

State sovereignty properly understood is not static. The frontiers of sovereignty and the modalities of its implementation change with time and with the obligations the State has under international law. Sovereignty is found in newly independent and highly independence-conscious states as well as in states extensively integrated in an international legal sub-system such as the European Union. The contexts of state sovereignty are diverse and its content is relatively indeterminate. It is through international law that we discover the exact scope of sovereignty. Of course it is necessary to assume, as the Permanent Court of International Justice stated in the Lotus case (1927), that a state is free and its sovereignty unfettered in absence of clear legal

obligation. But in areas such as human rights or those set out by the UN Charter, the scope of sovereignty is defined by obligations into which a state has freely entered. Such obligations confer upon states a duty to abide by law and to behave responsibly so as not to violate their legal obligations.

It is particularly important to stress the link between sovereignty and responsibility. The reason for this is historical. Much of the debate about sovereignty that has taken place since the establishment of the United Nations centered on sovereignty as a right of states and on the equality among sovereign states. This is understandable because the newly independent states which formed the majority of the UN's membership emphasized their own priorities – i.e. their need to establish themselves in the international community as free and equal with other states. This political need has shaped much of the UN's discussions during the first fifty years of its existence. Now, at a time when the UN-led codification of international law has created a densely knit web of international obligations for states, it is much more important to understand that sovereignty carries with it responsibilities and that responsible exercise of sovereign rights is essential for international stability. The responsible exercise of sovereignty includes the respect for internationally accepted human rights as well as positive action by states when this is necessary for implementation of these rights.

State Sovereignty and Non-Intervention

In no other area are the problems of sovereignty more fundamental than in the area expressed by the principle of non-intervention in the affairs of sovereign states. Logically, sovereign states are equal and therefore protected against all forms of intervention in their own affairs by other states. Prohibition of intervention is a logical corollary of the fundamental principle of sovereignty of states. But it is precisely here that the most serious dangers of an absolutist interpretation and use of state sovereignty may arise. Can sovereignty be used as a shield for gross violations of human rights? The answer, advocated by Kofi Annan, the Secretary-General of the UN, and by many others is a resounding no. Ways must be found to address such violations and stop their

occurrence. Might these ways include the use of force by other states and international organizations in certain conditions and under certain rules? In certain circumstances, probably, yes. These are, at present, the most important questions concerning state sovereignty.

Before addressing these core questions I wish to make a short digression into history with the aim of shedding light on the evolution and the current status of the principle of non-intervention under international law.

As a corollary of state sovereignty, the principle of non-intervention belongs to old principles of international law. And, like sovereignty, it has, from the very beginning, not been considered as an absolute principle. The principle was explicitly formulated in the eighteenth century in the work of Christian Wolff (1679-1754) and Emmerich de Vattel (1714-1767) both of whom recognized that under certain circumstances the "international community" (civitas maxima in the works of Wolff and community of nations in the work of Vattel) may intervene against a sovereign who threatens the international community. This approach established a degree of dualism: the principle of non-intervention is recognized but so are the exceptions from this principle in certain circumstances. The subsequent development of international law practice and doctrine specified those exceptions which by the end of the nineteenth century included humanitarian intervention.

This basic legal approach was not uniform: the lists of possible exceptions varied from one major author to another, and, above all, so did the practice of great powers that were in the position to decide whether to intervene or not. Legal principles and power politics mixed, not always to the advantage of international law. Humanitarian intervention in various parts of the Ottoman Empire in the nineteenth century were accompanied by the geopolitical interests of the intervening and other major powers. Selectivity and lack of consistent practice were among the problems. Generally, intervention can be undertaken only by more powerful states against weaker ones, and

political considerations have been always part of the decision whether to intervene or not to intervene.

In Latin America the experience with different types of foreign intervention gave rise to powerful doctrines of non-intervention, advocated by Argentinian jurists and diplomats Carlos Calvo (1824-1906) and Louis Maria Drago (1859-1921) and later in the 1930s by Genaro Estrada, the Foreign Minister of Mexico. The legal instruments adopted in the Inter-American framework in 1930s and 1940s developed a strict non-interventionist model.

Given this diverse historical background, the authors of the Charter of the UN adopted a realistic and wise approach. In its Article 2, paragraph 7 the Charter prohibited intervention by the UN (and therefore, a fortiori by individual Member-States of the UN) in "matters which are essentially within domestic jurisdiction" of states and defined one exception: the Security Council may act against a threat to the peace in accordance with its powers under chapter VII of the Charter. This was a realistic framework, made in a form and content allowing for further evolution. It was expected that states would further define their sovereignty through the future evolution of international law, which is constantly changing the scope of "matters which are essentially within domestic jurisdiction" of states. The Security Council was expected to decide which situations, including those arising from internal problems, constitute threats to the peace and therefore justify international intervention.

In subsequent years, however, the evolution of international law and state practice took a specific course. The Security Council became paralysed owing to Cold War divisions and deliberative organs of the UN became increasingly influenced by the newly independent states that gradually became a majority in the 1960s. These states – being both new and not firmly established - were strongly interested in the use of the UN as an additional layer of protection of their new and precious sovereignty. As a result, near-absolutist interpretations prevailed - a trend also favoured by the socialist camp which advocated strong statehood for reasons of ideology and the political needs of their ruling

regimes. This trend produced a near-absolutist interpretation of the principle of non-intervention which found its expression in the Declaration of Principles of International Law on Friendly Relations and Cooperation among States, in accordance with the UN Charter, adopted in 1970 (GA resolution 2625 [XXV]). The relevant passage of that Declaration reads:

> "No state or a group of states has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural element, are in violation of international law". (emphasis added)

This formulation, which bears more signs of the Latin American historical experience and legal tradition than that of Western European legal thought and practice, was adopted by consensus and was, like the Declaration as a whole, accepted as reflection of customary international law.

The tendency of a near-absolutist interpretation of the principle of non-intervention continued in subsequent years. Consensus, however, was not maintained and a resolution detailing the prohibited practices of intervention (GA resolution 36/103) was adopted in 1981 by a vote signalling the limits of the tendency which had prevailed in the previous period. Further changes took place in the 1990s with the ending of the Cold War, the collapse of the socialist system and the dramatic weakening of non-alignment both as a concept and a political movement. The general political context started to change and the international community gradually became receptive to a more nuanced approach.

This change in the global political environment coincided with humanitarian disasters of Rwanda (1994) and Bosnia and Herzegovina (1994-1995), and in Kosovo

(1999). The occurrence of genocide and its variant, "ethnic cleansing", put on the agenda, once again, the question of whether the international community should intervene militarily to prevent or stop humanitarian disasters or not, and if it should, under what conditions. The UN Secretary-General used his opening speech at the 54th session of the General Assembly (1999) to put this question before the Organization's membership. By clearly placing the moral question of whether state sovereignty should be allowed to shield massive violations of human rights, the Secretary-General took the courageous step of taking the debate on this issue to a new level.

The Security Council, meanwhile, had to face practical emergencies – in Kosovo, in Sierra Leone and in East Timor. Although its practice has not been coherent, one could say that the Security Council recognized, if only implicitly, that situations do arise in which military action must be taken as a result of "extreme necessity" – very much in the same way that might be legally acceptable under national law. The question of criteria for the assessment of such situations, and of authorization have not been answered yet. The debate continues and needs to evolve if an international consensus on these difficult and sensitive, but also very basic, issues is to be established.

Is there a case for an international standard on the use of force by states in humanitarian crises?

We are now in the midst of a debate and one should not presume that firm and precise conclusions are possible yet. Nevertheless, some guidance can be derived both from UN documents and from authoritative statements made outside the UN, in particular, from the recent report of the International Commission on Intervention and State Sovereignty, initiated by the Government of Canada and published in December 2001.

First, the criteria. In 1999, prior to his speech in the General Assembly, the Secretary-General issued a report to the Security Council on the Protection of Civilians in

Armed Conflict (doc. S/1999/957 of 8 September 1999). In that report (paragraph 40), he identified five factors which the Security Council ought to consider in deciding on an enforcement action which might become necessary in the face of massive and ongoing abuses. They are:

" (a) The scope of the breaches of human rights or violations of international humanitarian law including the numbers of people affected and the nature of violations;

(b) The inability of local authorities to uphold legal order or identification of their complicity;

(c) The exhaustion of peaceful or court-based efforts to address the situation;

(d) The ability of the Security Council to monitor actions that are undertaken; and

(e) The limited and proportionate use of force with attention to repercussions upon civilian populations and the environment."

These criteria make sense both in political and legal terms. However, they are not, at least yet, enacted in the form of law. Nor is the level of agreement around these criteria sufficient to suggest that there exists an international customary standard governing the resort to enforcement action in the case of a humanitarian disaster.

The International Commission on Intervention and State Sovereignty reached a very similar and clearly formulated set of conclusions. In its report (December 2001), the Commission emphasized that military action is justified - as an exceptional and extraordinary measure. The "just cause threshold" must be high. Only when a large-scale loss of life or ethnic cleansing takes place or is apprehended, military intervention becomes justified.

Furthermore, the Commission also spelled out the following "Precautionary Principles":

- Right intention (the intention to halt or avert human suffering);

- Last resort (non-military options have already been explored, with reasonable grounds to believe that lesser measures would not succeed);
- Proportional means and
- Reasonable prospect of success.

The two quoted, recent documents suggest that it might be possible to develop an internationally credible concept on the use of military force to stop or avert a major humanitarian disaster "as an exceptional and extraordinary measure". The main elements are already offered. They can be further refined, with the understanding that the decision-making bodies and, in particular, the Security Council, will have to make a separate judgment in every single situation. The suggested elements represent a broad framework of guiding principles for future decision-making. However, they cannot be interpreted as clear legal prescriptions, something they are not and cannot be as yet. Clearer consensus, confirmed by actual practice, needs to emerge.

A future consensus on these guiding principles need not be sought through an abstract and formalized discussion in the UN General Assembly. A case by case approach, based on specific decisions of the Security Council and in accordance with the Security Council's powers under the Charter could be a more realistic and productive approach.

Such an approach brings to the forefront additional questions. Assuming that there is an agreement about the general criteria guiding the Security Council's action, how does the Security Council ensure coherence in its practice? When is the best moment to act? What should happen when the Council members cannot agree on the desired course of action? Should an unauthorized action by regional organizations or groups of states, or by individual states, be deemed acceptable in certain circumstances?

The discussion on these issues is only at an early stage and it is related to crisis situations recently dealt with by the Security Council,whose practices are sometimes less and sometimes more controversial. The unauthorized military action of ECOMOG (an

ECOWAS force) in Sierra Leone in February 1998 was not controversial. NATO military action against the Federal Republic of Yugoslavia over the humanitarian crisis in Kosovo in 1999, on the other hand, was more controversial. In both cases, the Security Council acted ex post facto and adopted resolutions which defined the approach of the UN for the future. One could argue that this type of Security Council action amounts to an implicit rendering of legality to the international action as a whole since the consequences of the preceding action have now been accepted. But I am sure that there are different opinions among the legal experts and among the political decision makers on this issue. My own opinion, however, is that NATO military action against FRY in 1999 met the criteria of extreme necessity. Furthermore, the situation in Kosovo it intended to address, had been clearly recognized, in Security Council resolution 1199 (1998), as a threat to international peace, which implies a need for effective action. And finally, the situation which developed after the military action became the subject of the Security Council's decision-making and is now clearly within the framework of legality.

At the general level of discussion, the International Commission on International State Sovereignty offered an interesting approach. It proposed that in cases where the Security Council rejects proposals for action or fails to act, the alternative options are:

> "I. consideration of the matter by the General Assembly in Emergency Special Session under the "Uniting for Peace" procedure; and
>
> II. action within area of jurisdiction by regional or sub-regional organizations under chapter VII of the Charter, subject to their seeking subsequent authorization from the Security Council". (emphasis added)

The suggested approach represents an innovation, insofar as it adds the word "subsequent" to the word authorization. While the prevailing interpretation of the Charter suggests the requirement of prior authorization, the quoted approach seems to suggest a shift of the balance in favour of the regional organizations.

This leads to one of the central issues of the Charter's system of maintenance of peace and security. Chapter VIII offered a delicate and somewhat uneasy balance with a favour to a global as opposed to a predominantly regional approach to the issues of international peace and security. That balance came as a result of intense discussions in Dumbarton Oaks (1944) and in San Francisco (1945), a discussion which did not end with the adoption of the Charter. Regional organizations were established and have grown since the adoption of the Charter in many, although not in all, regions of the world. They have gained new roles and additional importance in the post-Cold War period. An effect of this evolution on the overall balance between the UN and the regional organizations is therefore expected. However, it would be politically unwise and legally problematic if this change weakened the UN. Working in partnership, and within the legal framework of the UN Charter, is perhaps one of the most important needs both for the UN and for the regional organizations in the field of maintenance of peace and security.

Partnership necessarily involves dialogue and a shared sense of responsibility. This would have to mean that both the UN and the regional organization need to address an incipient problem early on and to prevent violent conflict, if possible. Should the use of military force become necessary, they must act in a manner compatible with the primary responsibility of the UN for international peace and security. However, primary responsibility does not mean exclusive responsibility. If the UN manifestly fails to act when it should have acted, a regional organization might have to fill the gap.

Partnership and division of labour between the UN and regional organizations and other actors becomes particularly important in those situations in which it is difficult to generate the political will and resources necessary for action. In many situations, the case of Rwanda in 1994 being the most dramatic example, the questions of political will and resources represent the real obstacles to action in situations that had been recognized as a humanitarian crisis affecting international peace and security. The UN alone may not be able or fully prepared to act. Initiatives of regional organizations or individual states,

ready to work in partnership with the UN and carry a part of the burden are a vital ingredient in such situations. As the examples of operation Alba in Albania (1997) and East Timor in 1999 show, such awareness, and action based on it can lead to results, although not without difficulty or sacrifice.

The need to generate political will and mobilize the necessary resources often represents the most important task in the international action to avert or stop a major humanitarian disaster. The critical question in such cases is not so much how to ensure legality of international action, including military action, but how to convince states to act at all in a situation where the need and legality of action are already recognized. Two elements of a general nature seem to be essential in the process of generating political will and mobilizing the necessary resources.

First, the realization that international action serves the enlightened national interest of states as well as the international community as a whole. While there are no ready-made prescriptions available, it is obvious that the national interest should not be articulated only with reference to the most immediate needs of the states concerned but also with an understanding of the long term needs as well as the necessity to avoid even more serious problems in the future.

The second element is the set of universal moral imperatives, crystallized in the public conscience and legally enacted in international law. International law is not only a set of regulations, but also a moral guide necessary for the survival of the international community and for the prosperity of its members. It guides both restraint and action and calls for the latter when the threat of a humanitarian disaster becomes real.

In Conclusion

Any serious discussion on human rights, state sovereignty and the use of force intended to avert or stop humanitarian disasters involves a fundamental ethical issue: that of responsibility. Human rights are a necessary guarantee for the well-being of

individuals within groups and within a society as a whole. Individuals pursue their rights – in the vast majority of situations responsibly – taking into account the equal rights of others and the needs of society as a whole.

The role of the state is essential in the need to ensure respect for and, as the case may be, also active action for the realization of human rights. The last decade of 20th century has demonstrated that war and chaos mete out the worst and most massive violations on human rights. Hence the renewed realization of the important role of the state. But in order to play such a role, the state has to meet the standards of responsibility as defined in the international human rights law. This is an inherent part of sovereignty itself.

Sovereignty is not absolute and includes respect for its legal limitations. In the past, as well as in many cases at present, very serious abuses of human rights have originated from the state. That danger continues. At the time of the current, strengthened effort against terrorism, it is realistic to expect that threats to human rights will not come only from terrorists but also, and in some cases, perhaps, primarily from states which will try to take advantage of counter-terrorism to "settle accounts" with those whom they see as politically dangerous or subversive. Counter-terrorism could be a comfortable refuge for human rights violators. Once again, the international community will have to demonstrate vigilance and distinguish legitimate struggle against terrorism from abuse of state power. This will be a critical test of the responsible exercise of state sovereignty and of the responsibilities of the international community.

Finally, the responsibilities of the international community are also gaining in number and in importance. The evolution of international actions in the field of human rights has created standards of responsibility which need to be applied internationally to ensure respect for and the realization of human rights. These standards will have to be strengthened and refined at the time when counter-terrorism is becoming a major international priority.

A particularly important aspect of international responsibility relates to the need to protect potential and actual victims of humanitarian disasters. That responsibility belongs primarily to states but also, and not less important, to the institutions of the international community, especially the United Nations. The responsibility to protect may, in particular circumstances involve the need to use military force. In such situations, it is essential to reach a broad international consensus about the existence of that need, the political will to act and the necessary resources. In such cases, state sovereignty cannot be legitimately and credibly invoked as a shield against international action. When states abandon their own sovereign responsibility to protect human lives against a large-scale and man-made humanitarian disaster, or even worse, they themselves become the source of such a disaster, they deprive themselves of the protection of sovereignty and international action becomes legitimate.

All these aspects of responsibility are among the ingredients of the vision "focused on improving the conditions of individual men and women who give the state or nation its richness and character" – as the UN Secretary-General emphasized in his Nobel Lecture in December 2001. Such a vision cannot be fully realized as a short term objective. Neither is the effort to make it a reality entirely new. But it appears that the current century is starting with a well-developed set of concepts and norms as well as instruments for their realization, and above all, with a greater sense of responsibility than in earlier periods, which gives reasons to hope that real improvement is possible.

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APPENDIX A